



March 22, 1999

Ms. Susan M. Cory
General Counsel
Texas Workers' Compensation Commission
Southfield Building
4000 South IH 35, MS-4D
Austin, Texas 78704

OR99-0793

Dear Ms. Cory:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Open Records Act. Your request was assigned ID# 122892.

The Texas Workers' Compensation Commission (the "TWCC") received a request for the final report concerning ex parte communications with regard to the Norma Evans claim, TWCC No. 97-079366, and for other information concerning the investigation. You submit the responsive information to this office, and claim that the requested information is excepted from disclosure under sections 552.108, 552.111, and section 552.101 of the Government Code in conjunction with section 402.092 of the Labor Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 402.092 of the Labor Code states, in part:

- (a) Information maintained in the investigation files of the commission is confidential and may not be disclosed

- (d) For purposes of this section, "investigation file" means any information compiled or maintained by the commission with respect to a commission investigation authorized by law.

Labor Code § 402.029.

In a previous letter ruling, this office declined to apply section 402.092 of the Labor Code to make confidential investigative files related to allegations of sexual harassment and discrimination at TWCC. Open Records Letter No. 96-481 at 3 (1996). In this case, the requested information is exceptional because it was developed by TWCC in the course of discharging the duties imposed on it by statute, and it involves the conduct of one of TWCC's employees.¹ The responsive information itself states that TWCC's investigation concerned alleged violations of section 410 of the Labor Code and sections 142.3 and 140.4 of title 28 of the Texas Administrative Code entitled, respectively, ex parte communications and conduct and decorum. Usually, section 402.092 would not shield from public scrutiny the conduct of a public employee; however, in this case, TWCC's investigation is authorized by the act, and the act makes confidential the commission's investigations concerning compliance with Texas worker's compensation laws. Therefore, the requested information must be withheld as confidential pursuant to section 552.101 of the Government Code and section 402.092 of the Labor Code.

Having ruled on the requested information, we need not address the additional exceptions to disclosure that you claim. We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon

¹Section 414.002 of the Labor Code requires the TWCC division of compliance and practices to

(a) . . . [M]onitor for compliance with commission rules, this subtitle, and other laws relating to workers' compensation the conduct of . . . :

(3) insurance carriers; and
(4) attorneys and other representatives of parties. . . .

Labor Code § 414.002.

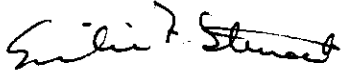
Section 410.167 of the Labor Code prohibits ex parte contacts between a hearing officer and a party. It states:

A party and a hearing officer may not communicate outside the contested case hearing unless the communication is in writing with copies provided to all parties or relates to procedural matters.

Labor Code § 410.167.

as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink, appearing to read "Emilie F. Stewart". The signature is written in a cursive, flowing style.

Emilie F. Stewart
Assistant Attorney General
Open Records Division

EFS\ch

Ref: ID# 122892

Enclosures: Submitted documents

cc: Mr. Paul Maclekowich
Houston Chapter Board President
American Civil Liberties Union
P.O. Box 132047
Houston, Texas 77210
(w/o enclosures)